ITEM 1

PROPOSED MINUTES

COMMISSION ON STATE MANDATES

State Capitol, Room 126
Sacramento, California

August 24, 2000

9:30 A.M. - PUBLIC SESSION

Present: Chairperson Annette Porini
Representative of the Director of the Department of Finance
Member William Sherwood
Representative of the State Treasurer
Member Heather Halsey
Representative of the Director of the Office of Planning and Research
Member Cindi Aronberg
Representative of the State Controller
Member Albert Beltrami
Public Member
Member Joann Steinmeier
School Board Member
Member John Lazar
City Council Member

CALL TO ORDER AND ROLL CALL

Chairperson Porini called the meeting to order at 9:30 a.m. All members were present.

APPROVAL OF MINUTES

Item 1 June 29, 2000

With a motion by Member Beltrami and second by Member Steinmeier, the minutes for the June 29, 2000 Commission hearing were adopted unanimously.

Item 2 July 27, 2000

With a motion by Member Steinmeier and second by Member Beltrami, the minutes for the July 27, 2000 Commission hearing were adopted unanimously.

PROPOSED CONSENT CALENDAR

PROPOSED STATEMENTS OF DECISION – TEST CLAIMS

Item 10 *Property Tax Administration: Schools* - CSM-4473-a
County of San Bernardino, Claimant
Revenue and Taxation Code Section 97
Statutes of 1991, Chapter 333

Item 11 *Property Tax Administration: ERAF* – CSM-4473-b
County of San Bernardino, Claimant

Revenue and Taxation Code Section 97.5
Statutes of 1993, Chapter 66

Item 12 *Standardized Testing and Reporting Test Claim* - 97-TC-23
San Diego Unified School District, Claimant
Education Code Sections 60609, Subdivision (a), 60615, 60630, 60640, 60641, 60643
Statutes of 1997, Chapter 828, et al.
Title 5, California Code of Regulations, Sections 850-874

Item 13 *Immunization Records - Hepatitis B* - 98-TC-05
Los Angeles County Office of Education
Education Code Section 48216
Health & Safety Code Sections 120325, 120335, 120340, and 120375
Statutes of 1978, Chapter 325; Statutes of 1979, Chapter 435;
Statutes of 1982, Chapter 472; Statutes of 1991, Chapter 984;
Statutes of 1992, Chapter 1300; Statutes of 1994, Chapter 1172;
Statutes of 1995, Chapters 291 and 415; Statutes of 1996, Chapter 1023
Statutes of 1997, Chapters 855 and 882
Title 17, California Code of Regulations Sections 6020, 6035, 6040, 6055, 6065, 6070, and 6075

PROPOSED STATEMENTS OF DECISION – DISMISSAL OF TEST CLAIMS

Item 14 *Real Property Tax Administration* - CSM-4418
Culver City Redevelopment Agency, Claimant
Statutes of 1990, Chapter 466

Item 15 *Conservatorships for Misdemeanants* – CSM-4508
County of Placer and County of Fresno, Co-Claimants
Chapter 722, Statutes of 1992

PROPOSED STATEMENT OF DECISION – INCORRECT REDUCTION CLAIMS

Item 16 *School Crimes Statistics and Validation Reporting*
Education Code Section 14044
Penal Code Sections 628, 628.1, 628.2, and 628.6
Statutes of 1984, Chapter 1607; Statutes of 1988, Chapter 78;
Statutes of 1989, Chapter 1457
California Department of Education's "Standard School Crime Reporting Forms"

A. Grossmont Union High School District, Claimant-99-4371-I-02
B. Panama-Buena Vista Union School District, Claimant 99-4371-I-03
C. Carlsbad Unified School District, Claimant -99-4371-I-04
D. San Diego County Office of Education, Claimant -99-4371-I-05

Ms. Higashi made one correction to Item 16 to add Marcia Faulkner, with the County of San Bernardino, as a witness. With a motion by Member Steinmeier and second by Member Sherwood, the consent calendar, consisting of Items 10, 11, 12, 13, 14, 15, and 16 was adopted unanimously.

HEARINGS AND DECISIONS, PURSUANT TO CALIFORNIA CODE OF REGULATIONS, TITLE 2, CHAPTER 2.5, ARTICLE 7

Ms. Higashi swore in all witnesses for the Article 7 hearing en masse.

TEST CLAIMS

Item 3 *Law Enforcement Racial and Cultural Diversity Training*
97-TC-06
County of Los Angeles, Claimant
Penal Code Section 13519.4
Statutes of 1992, Chapter 1267

Camille Shelton, Staff Counsel, introduced this item. She noted that staff found the test claim statute is not subject to Article XIII B, section 6 of the California Constitution because the requirement to complete the basic training course on racial and cultural diversity is a mandate imposed only on the individual who has peace officer status; the statute does not impose any activities on the local agency.

Parties were represented as follows: Leonard Kaye, Tom Laing, and Randy Olson, with the County of Los Angeles; Jim Miller and Amber Pearce with the Department of Finance; and Hal Snow with Peace Officer Standards and Training (POST).

Mr. Kaye submitted that the requirement to complete training is imposed on the recruit, but that he filed the test claim on the mandate to provide training.

Mr. Laing and Mr. Olson with the Los Angeles County Sheriff's Department described the diversity program being offered by their department.

Ms. Pearce concurred with the staff analysis.

Member Steinmeier asked Mr. Snow who was fundamentally responsible for providing diversity training. He replied that, in the case of law enforcement, all of the requirements that have come down from the legislature over the years have been provided by the employing agencies or local community colleges. He added that officers are sent on duty to attend the training and do not complete it at their own expense or volition.

Member Beltrami asked Mr. Snow if POST considers the two-hour tape it developed for diversity training adequate for this type of training. Mr. Snow replied that POST does consider it adequate, however, they leave it to the officer and the local agency to decide to supplement the tape with other forms of instruction. Member Beltrami noted that LA County's training is 24 hours.

Mr. Laing explained that the training for in-service officers includes 12 hours of culture specifics and four hours of sexual harassment training. The training for recruits includes 20 hours of cultural awareness training and four hours of sexual harassment training. Due to LA County demographics, they thought this specialization beyond the POST instruction was necessary. Mr. Laing added that their expanded training was approved by POST.

Member Beltrami asked if all recruits go through the training program, or if some are hired already certified. Mr. Laing replied that, with the exception of a merger with another agency, all new hires are required to attend their training facility.

Member Steinmeier asked Ms. Shelton to comment on the conflict of practice versus law. Ms. Shelton noted her confusion with the claimant's argument—the original claim asked for reimbursement for peace officer time to complete training, but today it appeared the claimant was asking for trainer time.

Mr. Kaye submitted that trainer time should be reimbursed. He added that trainee time should be reimbursed unless the person was enrolled in the community college program and was not on the payroll.

Chairperson Porini asked if, given the change of direction, the members thought they should ask for an expanded analysis. Ms. Shelton said she would probably request additional briefings from the parties. Members Sherwood and Steinmeier agreed that they were not prepared to move ahead today in light of the testimony.

Ms. Porini noted consensus among the members to continue the item and have staff look at the issues raised by Mr. Kaye and to review additional filings.

Item 4 *Sexual Harassment Training in the Law Enforcement Workplace*
97-TC-07
County of Los Angeles, Claimant
Penal Code Section 13519.6
Statutes of 1993, Chapter 126

Ms. Shelton introduced this item. She noted that the claim, which addresses sexual harassment training, includes the following three parts:

- Part 1 addresses subdivision (a), which requires POST to develop complaint guidelines for officers who are the victims of sexual harassment in the workplace. Staff found that the guidelines constitute an executive order and impose a reimbursable state mandated program by requiring local agencies to develop a sexual harassment procedure.
- Part 2 addresses subdivision (b), which requires the basic training for peace officers to include instruction on sexual harassment. Staff's analysis was the same as in Item 3 above. Staff recommended the Commission deny the claim with respect to subdivision (b).
- Part 3 addresses subdivision (c), which requires veteran peace officers to receive supplemental sexual harassment training by January 1, 1997. Staff found that subdivision (c) is subject to Article XIII B, section 6 and that it constitutes a new program. Staff provided two options to determine if subdivision (c) imposes costs mandated by the state, and recommended the Commission choose option 2, that subdivision (c) imposes costs mandated by the state for the salaries, benefits, and incidental expenses for each veteran officer to receive a one-time, two-hour course on sexual harassment and the costs of materials and trainer time for the course.

Parties were represented as follows: Leonard Kaye, Tom Laing, and Randy Olsen with the County of Los Angeles; Jim Miller and Amber Pearce with the Department of Finance; Hal Snow with Peace Officer Standards and Training (POST); and Allan Burdick with the California State Association of Counties.

Mr. Kaye disagreed with staff's analysis regarding subdivision (b) and argued that the Legislature imposed a mandate on local agencies and community colleges to provide sexual harassment training. Mr. Kaye agreed with staff's analysis regarding subdivisions (a) and (c).

He added that he did not necessarily agree the training should be limited to one two-hour session, but was willing to consider that issue during the Parameters and Guidelines phase.

Mr. Laing and Mr. Olsen described the sexual harassment program in the Los Angeles County Sheriff's Department.

Mr. Miller argued that the statutory requirement affects the content of the training but does not impose additional training. Furthermore, he argued that the statute imposes the requirement on the individual officers to acquire the training and not on the agencies to provide the training.

Mr. Snow explained that POST sets minimum training standards for California peace officers including a four-hour minimum basic course and two-hour supplementary training for officers who did not go through the basic course. Of the 6000 graduates of basic academies throughout the state, 2000 are not employed or affiliated students and 4000 are employed by law enforcement agencies. Member Beltrami asked who paid for non-employed and employed students. Mr. Snow replied that the non-employed students pay themselves, but are supplemented by community college funding provided by the state and student fees.

Member Beltrami asked staff to explain the relation of this item to Item 3 (above). Ms. Shelton replied that this item has three parts—the issue and staff recommendation to deny the second part is identical to Item 3. However, staff recommended approval of parts one and three, regarding complaint guidelines and continuing education.

In response to the Chair's request, Mr. Miller clarified that the DOF did not agree that there was a mandate regarding basic training, but no longer took issue with staff's recommendation regarding the guidelines.

Member Steinmeier asked Mr. Kaye to cite a state law requiring the local agency to be responsible for providing basic training. Mr. Kaye could not, but submitted that, when the Legislature required a new basic training course, it strongly implied that basic training academies (e.g., counties, cities, and community colleges) provide it.

Mr. Snow added that POST certifies 39 basic training academies statewide and that they are certified voluntarily.

Member Steinmeier moved staff's recommendation. Member Lazar seconded the motion. Member Beltrami asked Member Steinmeier if it was her position that the basic training mandate is on the individual. She replied that it was because the claimant was unable to cite any law that says it is the responsibility of the agency. She noted that school districts do not pay for teaching credentials.

Mr. Burdick argued that, since the Commission continued Item 3, they should put Part 2 of this claim over to the Parameters and Guidelines phase so they could decide the issues consistently. He was also concerned that today's discussion focused on a large county, which could have its own academy, and did not address the alternatives for, or impact on, smaller counties.

Ms. Shelton replied that whether the state mandates duties on local agencies is a threshold test claim issue and so it could not be put over for discussion during the Parameters and Guidelines. Further, based on Mr. Snow's testimony, she would not change her recommendation on subdivision (b) because there are no state statutes or regulations imposing requirements on local agencies or community colleges to provide basic training.

On a roll call vote, the motion carried 6-1, with Member Beltrami voting "No."

Item 5 *Child Abuse Treatment Services Authorization* - 98-TC-06
County of Los Angeles, Claimant
Penal Code Sections 273.1, 273a and 273d
Statutes of 1996, Chapter 1090

David Scribner introduced this item. He noted that staff recommended the Commission approve the test claim and find that the test claim legislation imposed reimbursable state mandated costs for the following activities:

- Development and implementation of child abuser's treatment counseling programs and vendor approval programs;
- Inspection and approval of child abuser's treatment counseling programs; and
- Receipt, care, and review of defendants' progress reports.

Parties were represented as follows: Leonard Kaye and Jim Wright, with the County of Los Angeles; and Jim Miller and Cheryl Stewart, with the Department of Finance.

Mr. Kaye and Mr. Wright concurred with staff's analysis.

Ms. Stewart agreed with staff's analysis regarding the first two activities, disagreed that receipt, care, and review of defendants' progress reports was a requirement in the law. She noted that, although treatment programs are required to submit the reports, there is not an additional requirement on probation officers to do anything with the report. Ms. Stewart submitted that, to the extent officers do anything with the report, it would be in conjunction with their responsibilities of enforcing the penalty for the crime, which is the probation requirement.

Mr. Scribner replied that the reports must go somewhere and someone must do something with them. He argued that the probation department would be responsible for the receipt, care, and review of these reports. Mr. Scribner added that, based on the language of the Penal Code, the county probation departments would use the reports as a tool to ensure compliance with the law.

Mr. Miller contended that use of the information is incidental—the primary goal is protecting the public. He submitted that monitoring progress through the treatment program is an integral part of protecting the public and that it is part of the crimes and infractions responsibility imposed on the county.

Member Beltrami moved staff's recommendation. Member Sherwood seconded the motion. On a roll call vote, the motion carried 6-1, with Chairperson Porini voting "No."

Item 6 *Physical Education Reports* - 98-TC-08
Bakersfield City School District and Sweetwater Union High School District, Co-Claimants
Education Code Section 51223.1
Statutes of 1997, Chapter 640

Sean Avalos, Staff Counsel, introduced this item. He noted that staff concluded the test claim legislation imposes a reimbursable state mandated program for activities necessary for reporting on compliance with physical education requirements. Mr. Avalos added that, although staff recommended approval of the test claim, the actual reimbursement period should begin no earlier than the date that the school district receives documentation from the California Department of

Education (CDE) that their district is specifically selected to participate in physical education compliance reporting.

Parties were represented as follows: Lawrence Hendee, with Sweetwater Union High School District; Wayne Stapley, with Bakersfield City School District; Jeff Bell and Barbara Taylor, with the Department of Finance; Carol Berg, with the Education Mandated Cost Network; and Jim Cunningham with San Diego Unified School District.

Mr. Hendee and Mr. Stapley agreed with staff's analysis.

Mr. Bell argued that the new legislation does not require districts to submit a report to the CDE. He further submitted that the existing Coordinated Compliance Review (CCR) for gender equity covers the same activities alleged in this claim. Mr. Bell contended that the subject legislation is actually more lenient regarding compliance than the existing process.

Mr. Avalos replied that, if the Superintendent of Public Instruction (SPI) took no action, there would be no reimbursement. However, if the SPI or the CDE adds an additional reporting requirement in the regulations, then the activity would be reimbursable at that time. Ms. Jorgensen added that this requirement is above and beyond the existing regulation, and while some basic information may be covered under current law, this is something additional that the SPI can request.

The Chair asked if there would be an offset since some basic information is covered. Ms. Jorgensen reiterated that this statute gives the SPI the authority to ask for additional information.

Member Steinmeier understood that it may seem logical to combine the two issues, but explained that if the SPI sees the issue as a discreet law, he/she may create it as a discreet report. She added that the audit would be added onto about ten percent of school districts after the CCR. Member Steinmeier submitted that, even if some basic information was covered, there is more staff time involved in generating yet another report. She asked staff if the Commission would need to suspend its finding at the Parameters and Guidelines phase until the SPI does something to create actual costs.

Ms. Jorgensen replied that mandates law does require a minimum of $200 of costs incurred for the mandate. However, without knowing what types of questions the SPI might ask, it would be difficult to assess. Ms. Jorgensen agreed that the Parameters and Guidelines might need to be put on hold.

Mr. Hendee noted that the 1999-00 training manual includes the new requirement for the test, although it does not include the details about what the SPI might ask.

Mr. Bell argued that the statute requires districts to report, but not to prepare a report.

Member Halsey asked staff if they would consider amending their recommendation to allow for offsets for reports or documents that are already prepared. Ms. Jorgensen replied that Parameters and Guidelines always contain a provision for offsetting savings.

Chairperson Porini asked if the districts prepare a variety of reports or if the CDE sends in a team of people to review documents. Mr. Hendee responded that the district receives notice the year before they are to be audited so they know what the team will be looking for and can prepare their records.

Member Beltrami asked if the team reviews the gender equity report as part of this review. Mr. Hendee replied that it does. Member Beltrami noted that, though the SPI can ask additional questions, additional questions are true of any audit. Ms. Jorgensen replied that it is true, however, in this case, there is a random selection of school districts.

Mr. Hendee was not sure how the CDE selects the districts. He argued that what a district has to do to defend itself relative to why a student is not receiving 200 minutes of instruction is to evaluate why they are not and report that to the SPI. Mr. Hendee explained that these are all the additional steps that a district must do to pass their compliance review.

Mr. Bell maintained that this activity was already covered under the existing CCR. Mr. Hendee disagreed and referred to the 1995-96 training manual, which did not contain the new physical education requirement. Dr. Berg clarified that Mr. Bell was referring to CDE documents that are current for 2000-01, which contain the current statute, after the law.

Member Sherwood recognized that two issues existed—one for 1995 through 2000, and the second for 2001 and on, for which there may be overlap creating an offset.

Mr. Cunningham submitted that Mr. Bell was referring to the 2000-01 training manual. Mr. Cunningham argued that the 2000-01 manual contained the new CCR language that was not in the prior training manuals.

Chairperson Porini asked if any district has completed the CCR. Mr. Cunningham did not know that answer. He added that, if a district has not gone through this process and therefore has no cost, it would not file a claim. He reasoned that language is not necessary in the Parameters and Guidelines.

Member Steinmeier moved the staff recommendation. Member Lazar seconded the motion.

Member Halsey asked if the gender equity and physical education requirements were in separate statutes. Dr. Berg replied that they were not separate statutes, but that the physical education requirement has been added into the training manual to meet the requirements of the new statute. She added that this is a new effort that would require new reporting, research and preparation if the district were selected.

The motion to adopt the staff recommendation carried unanimously.

Ms. Higashi clarified that the statute requires the claimant to file proposed Parameters and Guidelines with the Commission upon adoption of a Statement of Decision and imposes a penalty if they are not filed. Once the Statement of Decision is issued, staff could schedule a prehearing to decide how the claimants and interested parties wish to proceed. Chairperson Porini suggested that staff contact the SPI to find out if the yearly CCR schedule is being implemented. Ms. Higashi agreed to do so.

Item 7 *Behavioral Intervention Plans* - CSM-4464
Butte County Office of Education, San Diego Unified School District, and San Joaquin County Office of Education, Co-Claimants
Education Code Section 56523
Statutes of 1990, Chapter 959
Title 5, California Code of Regulations,
Sections 3001 and 3052

David Scribner introduced this item. He explained that the item was first heard at the September 30, 1999 hearing, but the motion to deny the claim failed on a 3-3 vote. At the November 30, 1999 hearing, the Commission instructed staff to hold the test claim until appointment of a seventh member. That member was appointed in April 2000.

Mr. Scribner noted that staff did not change its analysis finding that, under state law, the use of behavioral intervention plans under certain circumstances is required, while under federal law, the use of such plans is not required. Staff therefore recommended the Commission approve the test claim.

Parties were represented as follows: Frank Terstegge, with Paradise School District (formerly with Butte County SELPA); Gail Cafferata, with the Butte County Office of Education SELPA; Jim Cunningham, with the San Diego Unified School District; and Nona Martinez and Dan Stone, Deputy Attorney General, with the Department of Finance.

Mr. Cunningham agreed with staff's analysis. He noted that, in a September 21, 1999 letter, he had requested a few minor corrections and that staff had agreed to those corrections at the September 30, 1999 hearing. Mr. Cunningham then reiterated his contention that, even after the 1997 amendment to federal law, there was no federal requirement for state or local agencies to develop and implement behavioral intervention plans.

Mr. Terstegge testified that the 1990 Department of Finance (DOF) analysis of the Hughes Bill indicated that current law did not require use of behavioral interventions and that such a requirement would impose a mandated cost. The DOF analysis of the corresponding regulations, under the adoption process in 1992, also indicated that the requirement would impose a mandated cost. Mr. Terstegge noted that 1994 and 1996 attempts to reauthorize the Individuals with Disabilities Education Act (IDEA) failed. He submitted that in 1995 the Federal Office of Special Education Programs stated that federal law does not necessarily require Individualized Education Plans (IEPs) to include behavioral intervention.
Mr. Terstegge added that, in 1997, the IDEA was reauthorized to include strategies such as behavioral interventions, which were then required to be "consider[ed], when appropriate."

Mr. Cunningham submitted that, even if the Commission found a requirement in the 1997 federal law, the Hughes Bill and regulations exceed what might be required under federal law.

Ms. Cafferata alleged that several components in the state regulations do not even appear in the federal regulations. Mr. Terstegge added that all of the requirements described by Ms. Cafferata had to be included in the SELPA local plan, which is reviewed every four years, so there was a burden at the SELPA level in bringing this in line with the local SELPA plan.

Citing federal case law, Mr. Stone maintained that behavioral interventions are required under federal law. He contended that, if the Commission looked at federal law as it is interpreted and applied by the court, it would find that behavioral intervention programs were included under federal law long before the 1997 federal amendments. Mr. Stone submitted that the 1997 amendments were clarifying amendments.

Mr. Stone alleged that the state statute and regulations were enacted as a result of a lawsuit against the Superintendent of Public Instruction regarding California's behavioral intervention methodology and that the parties agreed the statute and regulations would provide appropriate assurance under federal law. He further argued that the federal law is not all-inclusive and that it contemplates that states may add detail and shading. He claimed that behavioral intervention

falls within "related services" not detailed in federal law and that the state was simply trying to comply with and implement the federal law with its statute and regulations.

Ms. Martinez argued that, by including behavioral interventions in IEPs, the state was ensuring handicapped pupils received a free appropriate public education as required by federal law.

Member Steinmeier submitted that, according to case law, the Commission must find a mandate if state law exceeds federal law. She asked if the state law includes special education students or all students. Ms. Cafferata explained that the law specifically requires an active IEP be in place and that it was designed for special education students.

Member Steinmeier asked about the minor changes Mr. Cunningham had mentioned earlier. Mr. Scribner indicated that staff still agreed with the modifications requested in the claimant's letter.

Mr. Stone noted that behavioral interventions are not used in every situation, only "if appropriate." He submitted that Mr. Terstegge testified in September 1999 that districts or SELPAs would not impose a behavioral intervention plan unless it was appropriate. Mr. Stone further argued that the fact that federal law allows for options, including behavioral intervention, does not mean the state law requiring behavioral intervention is a mandate.

Mr. Terstegge clarified that, in his September 1999 testimony, he noted that districts are mandated to a costly and extensive process before a decision is even made. Mr. Cunningham agreed. He added that nothing in federal law requires districts to go through the detailed and time-consuming steps outlined in the state regulation. Mr. Cunningham argued that, if there were less expensive alternatives and the state chose behavioral intervention, then this regulation imposes a state mandate.

Member Steinmeier said she still believed the state law and regulation was excessive and moved for approval of the staff recommendation with the minor modifications requested by the claimant. Member Beltrami seconded the motion. The motion carried 5-2, with Members Sherwood and Porini voting "No."

APPEAL OF EXECUTIVE DIRECTOR'S ACTION

Item 8 *Charter Schools II* - 99-TC-03
Los Angeles County Office of Education and
San Diego Unified School District, Claimants
Statutes of 1998, Chapter 34, et al.
San Diego Unified School District's Appeal of the Executive Director's Action Granting Department of Finance an Extension for Filing Comments

Pat Jorgensen introduced this item. She explained that the Commission's Executive Director, Paula Higashi, approved the Department of Finance's (DOF's) third request for an extension to file comments on this claim for good cause on July 13, 2000. The DOF was instructed to file separate comments on *Charter School II* and *Charter Schools III* test claims since they were not consolidated.

Ms. Jorgensen noted that staff received the claimant's request for the Commission to deny the extension on July 19, 2000. This date was outside of the required ten-day notice before the July 27, 2000, Commission hearing and so the item was not placed on that agenda.

Ms. Jorgensen explained that the Commission could deny the claimant's appeal or vacate the Executive Director's action to approve the DOF's request for an extension of time.

Jim Cunningham, with the San Diego Unified School District, outlined the chronology of the claim. He argued that the DOF's third request for an extension of time so they could consolidate their responses for *Charter Schools II and III* was not for good cause because the claims were not consolidated, nor should they be.

Ms. Higashi explained that the regulations provide a general 'catchall' for good cause. She thought that consideration of the claims at the same time might be helpful for the analyst and noted that the DOF comments were submitted soon after. Ms. Higashi clarified that the claims had not been consolidated. She added that the hearing date was not in the near future, so the extension did not have an impact in terms of staff or Commission workload.

Mr. Cunningham argued that it delays consideration of the test claim beyond the regulatory and statutory requirements to complete the process in 18-months.

The Chair asked if claimants ever request extensions. Mr. Cunningham replied that they do, but there is a significant difference—delays benefit the state because the state does not begin paying the claims, or interest, until one year after the Statewide Cost Estimate is adopted.

Member Beltrami asked Ms. Higashi if the basis of her decision was possible consolidation. She replied that it was not—the DOF requested the opportunity to review the claims concurrently, but she specifically instructed DOF to file the responses separately.

Member Steinmeier acknowledged Mr. Cunningham's comments regarding the advantages of delays to the state but not claimants. However, she noted that, in the past, it had helped the Commission to consider similar issues concurrently, even if not consolidated. For that reason, she did not object to the extension in this case, though as a general strategy she did not agree with continuous delays.

Mr. Cunningham understood, however, he submitted that these test claims present very different issues and involve different types of entities. Member Steinmeier still said it was helpful for purposes of background and understanding.

Member Sherwood moved for denial of the request. Member Aronberg seconded the motion. The motion carried 6-1, with Member Halsey voting "No."

Lunch Break – 12:00 ¾ 1:30 P.M.

INCORRECT REDUCTION CLAIM

Item 9 *Graduation Requirements* - CSM 4435-I-01
San Diego Unified School District, Claimant
Education Code Section 51225.3
Statutes of 1983, Chapter 498

Claimant's Request for Disqualification of the State Controller's Office Representative

Sean Avalos, Staff Counsel, introduced this item. He noted that the San Diego Unified School District requested the Controller's representative be disqualified from hearing any matter related to the *Graduation Requirements* Incorrect Reduction Claim (IRC) filed by the district. The claimant submitted that it could not be afforded a fair and impartial hearing because the Controller is a party to the claim and that reasonable persons would doubt the Controller's

impartiality in an action that challenges a prior decision by the Controller. Staff recommended that the claimant be permitted to present its request, followed by a response from the Controller's representative. The other members could then determine whether to act on the district's request.

Parties were represented as follows: Jim Cunningham, with San Diego Unified School District; Carol Berg, with Education Mandated Cost Network; Jeff Yee and Shawn Silva, with the State Controller's Office; and Peter Cervinka, with the Department of Finance.

Mr. Cunningham submitted that the State Controller's Office (SCO) representative should be disqualified because due process requires there to be an impartial decision-maker. He argued that, unlike other types of claims, an IRC is an action against the SCO, challenging the decision of the SCO representative. Secondly, Mr. Cunningham contended that, if a reasonable person would doubt the representative's impartiality, disqualification was appropriate. He added that showing of actual bias was not necessary. If the SCO representative did not recuse herself, Mr. Cunningham requested the other members vote to disqualify her.

Member Aronberg replied that, by virtue of law, the Controller has a seat on this Commission and that no statute or regulation requires or suggests that a representative dismiss herself or that calls for disqualification in this situation. She stated that it would be absurd to ask the Chair to recuse herself any time the Department of Finance sits at the table, or Member Steinmeier to do so when there is a school claimant. She added that, as the SCO representative, she acts independently and has not discussed this matter with the Controller or with the SCO's Accounting and Reporting Office.

Member Steinmeier stated that the Commission had always relied on members individually recusing themselves if they felt conflict because they were involved personally and not just through the organization they represent. At this point, she was not willing to change that practice. Member Beltrami agreed and added that he hoped any member would recuse him/herself if a possible conflict existed so there would not even be the appearance of impartiality.

Hearing no motion for dismissal, the Chair called for presentation of the item.

Incorrect Reduction Claim

Mr. Avalos stated that the claimant was alleging that the State Controller's Office (SCO) had incorrectly reduced their reimbursement claims for teachers' salaries for fiscal years 1984-85 through 1995-96. The SCO and the Department of Finance (DOF) refuted the claimant's contentions. Mr. Avalos added that the California Department of Education (CDE) asserted that school districts should not have incurred increased costs related to this mandate since the districts could have adjusted their teaching staff. Staff found that the SCO did not incorrectly reduce the reimbursement claims.

Mr. Cunningham argued that the state cannot impose a new program and avoid its constitutional obligation to reimburse a school district by requiring or authorizing a local agency to eliminate a local program in order to fund a state program. In other words, he submitted that the test claim statute authorized, but did not require, school districts to lay off teachers who teach elective subjects in order to hire teachers who teach the mandated science courses. Mr. Cunningham submitted that his district experienced zero cost savings because they did not lay off any non-science teachers. He argued that, contrary to the staff and SCO's positions, under the statutes

and regulations in effect when these claims were filed and this test claim was approved, it is not the claimant's burden to prove that they did not have cost savings.

Mr. Silva agreed with staff's analysis. He submitted that, according to the Parameters and Guidelines, Education Code section 51225.3, and surrounding statutory and constitutional law, only a differential is reimbursable. Mr. Silva argued that the only required costs were those to put science in place of another class, such as changing the room or building, increased salary costs, text book costs, etc. He added that, since the statute provided authority to lay off other teachers, if the school board chose the option to retain its teachers, the cost is not reimbursable.

Mr. Silva explained that the auditors were subtracting the cost savings of releasing non-science teachers from the costs incurred from hiring science teachers to arrive at a total cost. He argued that, to say the cost savings was zero with no documentation to support it leaves the auditors with an unsupportable formula. Mr. Silva submitted that the SCO did not presume offsetting savings, rather, they had not received evidence either way. He disagreed with the claimant's contention that the SCO has the burden of proof in this case. Mr. Silva alleged that the claimant was attempting to convert an optional expense to one that is required.

Mr. Cervinka concurred with the SCO. He added that districts experienced no increase in instruction time and so there must have been some activity that resulted in cost savings for which the Parameters and Guidelines require documentation.

Member Steinmeier contended that the only reasons a district would not lay off any teachers after adding new classes are if its population increased or the teacher-student ratio changed. She submitted that it would not be directly related to this mandate and asked Mr. Cunningham why he thought the district did not lay any non-science teachers off.

Mr. Cunningham replied that his district still offered all of the same elective classes and so it still needed those teachers. Member Steinmeier explained that her district maintains the student teacher ratio, and so if science sections are added, fewer sections of electives are offered. Mr. Cunningham stated that he was not involved in the budgetary process in 1983 when this mandate went into place, but he researched the records and discovered that no layoffs took place. His assumption was that the district continued all classes and incurred the cost. However, even if the district discontinued an elective class, Mr. Cunningham submitted that it still incurred a cost. He maintained that the state eliminated options and imposed costs to eliminate teachers.

Member Steinmeier recognized the complicated process to eliminate teachers and to hire teachers, especially science teachers. She asked if that was part of the claim. Mr. Cunningham replied that he did not do a differential calculation. He explained that he took into account changes in enrollment and class size and asked for only a proportional amount of science teachers hired. He added that the Commission decided during the test claim phase that staffing was a reimbursable cost, so the only question was whether there were cost savings and he had none.

Member Steinmeier noted that the CDE's hypothesis that districts should not have costs did not support Mr. Cunningham's contentions.

Mr. Cunningham replied that the CDE's letter was submitted during the Statewide Cost Estimate phase. The letter was not testimony and was not made in a hearing. Member Steinmeier clarified that it was part of the record, however.

Member Beltrami questioned the presumptions made by the SCO. Mr. Silva explained that the SCO presumed that districts were reducing non-science teacher staffing in accordance with the increase in science teacher staffing, but that they were not presuming the dollar amounts matched exactly.

Dr. Berg argued that the mandate requires addition of science classes but does not require elimination of electives. She added that, unlike elementary students, the kids do not all move from one class to another—it is not a clean swap of classes. Dr. Berg further noted that science teachers at the secondary level are licensed to teach science and cannot teach several other classes. She stated that the matter was not as simple as the SCO submitted.

Member Beltrami stated that the problem was that the minutes of instruction per day had not increased. Dr. Berg replied that some districts had actually added minutes during zero periods before school or stretched the day for some kids. Member Steinmeier agreed that was true.

Member Aronberg moved staff's recommendation. Member Sherwood seconded the motion. The motion carried 5-2, with Members Beltrami and Lazar voting "No."

INFORMATIONAL HEARING PURSUANT TO CALIFORNIA CODE OF REGULATIONS, TITLE 2, CHAPTER 2.5, ARTICLE 8

PROPOSED REGULATORY ACTION

Item 17 Approval of Modifications After Close of Public Comment Period: Proposed Amendments to California Code of Regulations, Title 2, Chapter 2.5 Adding Section 1183.09 – Dismissals

Ms. Jorgensen introduced this item. She noted that in February 2000, the Commission initiated a rulemaking proposal to establish a procedure for dismissal of a pending action, postponed or placed on inactive status at the result of a party or claimant, which is not reactivated within one year from the date of the postponement or placement on inactive status. On June 29, 2000, the Commission conducted a public hearing on the rulemaking proposal, which coincided with the expiration of the 45-day public comment period. Ms. Jorgensen explained that the commentators proposed several clarifying and technical amendments. Staff agreed with most suggestions, as reflected in the proposed modified text. Accordingly, staff amended the proposed regulations to:

1. Extend the time for notice of a dismissal of a test claim from 60 days to 150 days, since the test claim is more akin to a class action;
2. Provide that, in the case of the dismissal of a test claim, notice shall be made to all potential claimants;
3. Clarify that another local agency or school district may substitute in as a test claimant under existing substitution regulations;
4. Provide that notices of dismissal shall be posted electronically, for due process, to ensure everyone has an opportunity to come forward or be aware of the dismissal; and
5. Provide that postponements made by the Commission or other state agency and postponements made pending the outcome of a similar test claim issue, either before the Commission or the courts, shall not be included in determining whether a test claim has been postponed or placed on inactive status for more than one year.

Staff recommended the Commission approve staff's proposed regulatory text as modified after the close of the public comment period and authorize staff to make any technical, non-substantive edits to the proposed text resulting from the Commission's action. Ms. Jorgensen added that, if the Commission approves staff's proposed modifications, the modified text would go out for an additional 15-day public comment period. Thereafter, staff would prepare the final proposed text and bring the final text to the Commission in September for adoption.

Member Steinmeier thanked the claimants who participated in the process and moved to approve the modifications and send them out for comment. With a second by Member Aronberg, the motion passed unanimously.

Item 18 Approval of Modifications After Close of Public Comment Period: Proposed Amendments to California Code of Regulations, Title 2, Chapter 2.5, Amending Sections 1181.1, 1183, 1183.05, 1183.12, 1185, 1185.01, 1185.02, 1185.2, 1188.4 of Chapter 2.5 of Division 2, Title 2 of the California Code of Regulations (AB 1679)

David Scribner introduced this item. He noted that, in February 2000, the Commission initiated a rulemaking proposal to amend the following sections of its regulations: §§1181.1, 1183, 1183.05, 1183.12, 1185, 1185.01, 1185.02, 1185.2, 1188.4. He stated that the proposed action was necessary to interpret, implement, and make specific Statutes of 1999, Chapter 643, also known as A.B. 1679.

Mr. Scribner noted that, on July 27, 2000, the Commission conducted a public hearing on the rulemaking proposal, which coincided with the expiration of the 45-day public comment period. The commentators proposed several clarifying and technical amendments. Staff agreed with some suggestions, as reflected in the proposed modified text. Accordingly, staff amended the proposed regulations to:

1. Require inclusion of prior State Board of Control and Commission decisions in test claim filings;
2. Give the Executive Director 45 days to consolidate or sever part of any test claim;
3. Clarify that claimants have 30 days to resubmit a completed Incorrect Reduction Claim; and
4. Clarify that the power to order reconsideration of a prior test claim includes the power to amend a test claim decision.

Staff recommended the Commission approve staff's proposed regulatory text as modified after the close of the public comment period and authorize staff to make any technical, non-substantive edits to the proposed text resulting from the Commission's action. Mr. Scribner explained that, if the Commission approved staff's proposed modifications, the modified text would go out for an additional 15-day public comment period. Thereafter, staff would prepare the final proposed text and bring the final text to the Commission in September for adoption.

With a motion by Member Sherwood and second by Member Halsey, the item was approved unanimously.

EXECUTIVE DIRECTOR'S REPORT

Item 19 Workload, Legislation, Next Agenda, etc.

Paula Higashi reported the following:

Pending Legislation. An update is included in the binders.

Parameters and Guidelines. The training issue will be taken up on a case-by-case basis.

Staffing. Commission staff is currently holding interviews for the vacant positions. Cathy Cruz, a new Staff Services Analyst, was introduced.

Future Agendas. The September agenda is included in the binders, though some changes are expected.

Chairperson Porini thanked staff for its hard work towards eliminating the backlog.

CLOSED EXECUTIVE SESSION

Chairperson Porini reported that the Commission would be meeting in closed executive session pursuant to Government Code section 11126, subdivision (e), to confer with and receive advice from legal counsel in consideration and action as necessary and appropriate upon the pending litigation listed on the published notice and agenda; and, Government Code section 11126, subdivision (a) and 17527 to confer on personnel maters listed on the published notice and agenda.

ADJOURNMENT

The Chair reported that the Commission had met in closed executive session pursuant to Government Code 11126, subdivision (e), to confer with and receive advice from Legal Counsel, to report, in consideration and action as necessary and appropriate upon the pending litigation listed on the published notice and agenda; and, Government Code section 11126, subdivision (a), and 17527 to confer on personnel matters listed on the published notice and agenda.

Hearing no further business, Chairperson Porini adjourned the meeting at 3:00 p.m.

PAULA HIGASHI
Executive Director

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